

not cited the court to Eighth Circuit cases addressing this issue, or otherwise convinced the court that the law is uncertain under the facts of this case. Defendants' own written policies state that "[i]nmate housing assignments will be made in a nondiscriminatory manner and will not be made based on race, religion, nationality or political belief." (Doc. 72-2 at 5.)

Defendants summarily state that plaintiff is believed to be a danger to young, weak white offenders because he wrote a letter to and was discovered to be romantically involved with one white offender.¹ Clearly, that presents legitimate considerations for not housing plaintiff with that one inmate. Further, plaintiff has no right to choose his roommate.

Nevertheless, the law is clear that "racial segregation, which is unconstitutional outside prisons, is unconstitutional within prisons, save for the necessities of prison security and discipline." Cruz v. Beto, 405 U.S. 319, 321 (1972). In a prior opinion, the Court has also stated in a concurrence "that prison authorities have the right, acting in good faith and in particularized circumstances, to take into account racial tensions in maintaining security, discipline, and good order in prisons and jail." Lee v. Washington, 390 U.S. 333, 334 (1968). Thus, the law is clear that under appropriate and legitimate circumstances, defendants may consider race as a factor when making housing assignments.

The problem with this case is that defendants have not come forward with sufficient evidence of safety and security concerns to support the use of race as a factor in making housing assignments at the institution or with regard to plaintiff specifically. There is no evidence before the court indicating why defendants believed that plaintiff presented more of a danger to young, weak white offenders than to young, weak offenders of his own race. If defendants have such evidence and desire to file a supplemental motion on grounds other than respondeat superior and qualified immunity, they may do so within twenty days.

THEREFORE, IT IS ORDERED that defendants' motion of January 29, 2009, for summary judgment on the basis of respondeat superior and qualified immunity is denied. [72] It is further

¹Plaintiff was also convicted of rape.

ORDERED that defendants may file a supplemental motion for summary judgment within twenty days, and plaintiff may respond within twenty days after it is filed.

/s/ _____

NANETTE K. LAUGHREY
United States District Judge

Dated: June 24, 2009
Jefferson City, Missouri